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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/928,272	09/12/1997	MICHAEL J. ISKRA	P-3818	9434

7590 11/26/2007
RICHARD J RODRICK
BECTON DICKINSON AND COMPANY
1 BECTON DRIVE
FRANKLIN LAKES, NJ 074171880

EXAMINER

MITCHELL, TEENA KAY

ART UNIT	PAPER NUMBER
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3771

MAIL DATE	DELIVERY MODE
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11/26/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

08/928,272

Applicant(s)

ISKRA, MICHAEL J.

Examiner

Teena Mitchell

Art Unit

3771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 September 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 5-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Ayres (3,945,928).

Regarding claim 1, Ayres discloses an elongate tubular housing (Figs. 1, 2) having opposed first and second ends (Figs. 1, 2); and a solid partition (at 18; remains a solid partition until pressure changes, therefore meets the limitations of the claim because it is a solid partition) forming a closed bottom (Fig. 1) positioned within said housing between said first and second ends (Figs. 1, 2); said housing defining a volume (at 11) for specimen collection and containment therein between said first end (at 14) and said partition (at 18); said second end forming a false bottom (at 12, based upon element 12 being removable it meets the limitations of the claim of being a false bottom) comprising a bottom end below said partition, said bottom end comprising an annular skirt (Figs. 1, 2) and a semi-spherical bottom (Figs. 1, 2), wherein said semi-spherical bottom comprises an opening (Figs. 1, 2; when 12 is removed there is an opening at 12).

Regarding claim 6, Ayres discloses wherein said partition is conical in shape (at 18).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 5 and 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ayres (3,945,928) in view of Burns (5,458,854).

Regarding claim 5, Ayres discloses the claimed invention except for the partition (at 18) having an arcuate shape with at least a partially rounded bottom portion. Burns in a collection assembly teaches a partition with an arcuate shape with at least a partially rounded bottom portion (at 38). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the shape of the partition of Ayres to any well known arcuate shape with a partially rounded bottom portion based upon the teachings of Burns that the shape is known in the art and collection devices.

Regarding claim 7, Ayres discloses the claimed invention except for the housing being a thermoplastic material. Burns in a collection assembly teaches a housing of a thermoplastic material so that the specimen may be readily viewed (Col. 5, lines 43-50). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the housing of Ayres to have the housing made of a thermoplastic

because using a thermoplastic would allow the specimen to be readily viewed, as taught by Burns.

Regarding claim 8, Burns teaches wherein said thermoplastic polymer is polyethylene terephthalate, polypropylene, polypropylene, polyethylene naphthalate, polyvinyl chloride or copolymers thereof (Col. 5, lines 43-50).

Regarding claim 9, Ayres discloses the claimed invention except for wherein said outer diameter is about 13 to about 16 millimeters, said length is about 75 to about 100 millimeters and said internal volume is about 1 to about 3 millimeters. However, the Applicant has fails to disclose why those particular dimensions are advantageous or what particular problem those specific dimensions solve. Furthermore, depending on the intended use ((e.g., how much of a sample is to be collected and the type of test being performed (e.g., CBC, Chem-10, TSH, etc), the dimensions of the housing will vary (as different test require different tubes sizes) and such dimensions may also be derived through routine observation and experimentation and therefore)), it would have been obvious to one of ordinary skill in the art to make the housing of any desired dimensions to fit the needs of the user.

Response to Arguments

Applicant's arguments with respect to claims 1 and 5-9 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

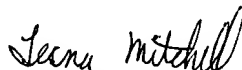
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Teena Mitchell whose telephone number is (571) 272-4798. The examiner can normally be reached on Monday-Thursday from 6:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Teena Mitchell
Primary Examiner
Art Unit 3771
November 26, 2007

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